IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

DAYSTAR SILLS, INC., a Delaware Corporation, Plaintiff,	)	
v.	)	C.A.No. 06L-05-026 MJB
ANCHOR INVESTMENTS, INC., a Delaware Corporation, and COUNCIL FOR SAFE HARBOR CONDOMINIUM ASSOCIATION through council members J. SCOTT DEKUYPER and DONNA W. DEKUYPER, and SOPB EXCHANGORS LLC., a Delaware limited liability company, BARBARA M. ALLEN, TRUSTEE OF THE BARBARA M. ALLEN REVOCABLE TRUST, MELISSA K. KESSLER, KIMBERLY GRIM, KELLY PHILLIPS, CLARA MARIE HIGGINS, GOOD FOR YOU! LLC, a Delaware limited liability company, STEVEN A. POLAKOFF, HEIDI M. JOLSON, WILLIAM J. HUNTLEY, MARIA E. HUNTLEY, JOHN P. MAGILL, SUSAN A MAGILL, THOMAS F. GREELEY, JR. LOUIS G. DOUSA, JR., MELINDA P. CHILDRESS, TRUSTEE, JOHN A. SERGOVIC, JR., CHRISTINE E. SERGOVIC, ANDREA L. BARROS, A. RICHARD BARROS, MAE LUNDY, FRANK P. PRESTA, MARY E. PRESTA, JOHN F. DICKEY, LINDA M. DICKEY, JOHN W. SHORT & JANET L. SHORT, TRUSTEES, Defendants.	)	

Submitted: January 18, 2007
Decided: April 12, 2007
Upon Defendant's Motions to Dismiss, **DENIED**.

OPINION AND ORDER

Donald L. Logan, Esquire, Tighe, Cottrell & Logan, P.A., Wilmington, Delaware, Attorney for Plaintiff, Daystar Sills, Inc.

John A. Sergovic, Esquire, Sergovic & Ellis, P.A.,Wilmington, Delaware, Attorney for Defendant Anchor Investment, Inc.

BRADY, J.

Introduction

This is a mechanics' lien action filed on May 26, 2006 by Daystar Sills, Inc. ("Daystar") against Anchor Investments, Inc. ("Anchor"). Anchor has filed three motions to dismiss: 1) motion to dismiss for failing to comply with statutory requirements of 25 Del. C. Ch. 27; 2) motion to dismiss the *quantum meruit* claims; and 3) motion to dismiss for lack of venue and jurisdiction. On January 18, 2007, a hearing was held on the motions. For the reasons that follow, the motions to dismiss are **DENIED**.

Factual Background

On August 19, 2003, Daystar, a general contractor, entered into three contracts with Anchor to build twelve residential condominiums, six commercial condominiums, and one hotel condominium. The contracts were for the amounts of $2,270,992.00, $107,000.27, and $2,993,013.72 respectively, totaling $5,371,006.22. In the course of performance, several change orders were executed, which increased the total amount of the three contracts to $5,671,943.65.

The Anchor-Daystar contract incorporated by reference the AIA Document A201-1997, which includes a provision for termination by the owner for cause. The contract provided that an owner may terminate for

"substantial breach of a provision of the contract." According to the terms of the contract, Daystar had 305 days from commencement to substantially complete the entire work. Daystar began furnishing labor and materials on July 3, 2003. More than two years later, on September 1, 2005, Anchor terminated the contract with Daystar on grounds that Daystar had breached the contract by failing to substantially complete the work in 305 days. Consequently, Daystar stopped all work on the site on September 9, 2005, and on November 29, 2005, submitted its final invoice. Subsequently, as required by the contract, Daystar filed a claim with the architecture firm to dispute the termination.[1]

The architecture firm found that Daystar was in breach of contract by failing to substantially perform the required work within 305 days and by failing to request an extension. Daystar filed a demand for arbitration as required by the contractual terms. Currently, the date of the arbitration is pending. Daystar filed the instant action for mechanics' lien in the amount of $219,543.29 and interest, on May 26, 2006. This is the Court's decision on Anchor's Motions to Dismiss Daystar's claims.

Standard of Review

[1] The contract section 4.6.1 requires a decision by the architect on any claims arising out of the contract, after which, the claims are subject to arbitration. *See* Amended Complaint, Ex. D, Anchor-Daystar contract, section 4.6.1.

A motion to dismiss will not be granted if Plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.[2] When deciding a motion to dismiss a mechanics' lien, the court is to consider as true all well-pleaded allegations and any uncertainty concerning the allegations of the complaint should be resolved in favor of the Plaintiff.[3]

Analysis

I) Anchor's motion to dismiss for failing to comply with statutory requirements of 25 DEL. C. Ch. 27

Anchor contends the mechanics' lien claims should be dismissed for failure to comply with statutory mandates because 1) Daystar did not name the owners of the property in the caption or Statement of the Claim in violation of 25 *Del. C.* §2712(b)(2), 2) Daystar failed to segregate its claim in accordance with 25 *Del. C.* §2713, and 3) Daystar's claim is barred by the statute of limitations.

1) Failure to name the individual unit owners in the caption or Statement of Claim.

Upon completion of the condominiums, Anchor sold several of the residential and commercial units. The initial caption and statement of claims

[2] *Bissell v. Papastavros' Assocs. Medical Imaging,* 626 A. 2d 856, 860 (Del. Super. 1993).
[3] *Spence v. Funk*, 396 A.2d 967, 968 (Del. Super. 1978); *Ramsey v. Disabatino,* 347 A.2d 659, 661 (Del. Super. 1975).

of this mechanics' lien action name only Anchor, and do not name each individual unit owner as defendants. However, Daystar filed an Amended Complaint and statement of claims which does name the individual owners as defendants. Anchor argues that the caption fails to identify each individual owner pursuant to the rule and thus the Complaint should be dismissed.

25 *Del. C.* §2712(b)(2) requires that the statement of the claim in a mechanics' lien set forth among other things, "the name of the owner or reputed owner of the structure;" In Delaware, it is settled law that "owner" in the statute refers to owner on the day of contract.[4] To satisfy the constitutional requirements of notice and opportunity, however, it is

[4] *Carswell v. Patzowski*, 55 A. 342 (Del. Super. 1903)*; First Florida Building Corp. v. Robino-Ladd*, 424 A.2d 32 (Del. Super. 1980).

necessary to join the individual unit owners in accordance with Civil Rule 19.[5]

In the instant case, Anchor was the only owner on the day that the Anchor-Daystar contracts were formed. Therefore, Daystar correctly named Anchor as the only Defendant in the statement of the claims and the caption of the case. Subsequently, pursuant to Civil Rule 19, Daystar joined the individual owners and named them in the Amended Complaint and statement of claims. Therefore, the Court finds that both the constitutional and the statutory requirements are satisfied.

2) Failure to segregate claims in accordance with 25 *Del. C.* §2713

Anchor contends Daystar's lack of specificity in its claims as to the amounts allegedly owed on each unit or project clouds the title of innocent homeowners and is in violation of the statutory mandates. Daystar argues that payment is owed for materials and labor furnished for the benefit of the entire structure, that the scope of the work performed was done pursuant to an agreement which did not apportion the items or payments between

[5] *Id.*; *See also* Super. Ct. R. Civ. Pro. 19 ("A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.")

individual units, and finally that Daystar was not required to apportion its claims between the individual units because the work performed pursuant to the agreement was for the benefit of the entire structure.

Under Delaware's mechanics' lien statute, a claimant may file a joint claim against two or more "structures" provided that the claimant "designate the amount which he claims to be due to him on each of such structures."[6] Integral to every claim for a mechanics' lien is the identification of the "structure" against which the lien is sought.[7] "To the extent labor or materials are supplied in and solely for the benefit of a condominium townhouse, each townhouse is a separate 'structure' within the meaning of 25 *Del.C.* § 2713. However,[t]o the extent that labor or materials are supplied for the benefit of the common elements of the row of townhouses, the entire row may constitute a single 'structure' for mechanics' lien purposes."[8] "A contractor or subcontractor, who supplies labor and/or materials for the benefit of an entire structure, is entitled to file a mechanics' lien against the entire structure, even though the 'structure' may be comprised of individual units."[9]

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[6] 25 *Del.C.* § 2713.
[7] 25 *Del.C.* § 2712(7).
[8] *Wilmington Trust Company v. Branmar, Inc.,* 353 A.2d 212, 215 (Del. Super. 1976); *Kershaw Excavating Co. v. City Systems, Inc,.* 581 A.2d 1111 (Del. 1990).
[9] *Kershaw Excavating Co. v. City Systems, Inc*., 581 A.2d 1111 (Del. 1990).

Here, Daystar did not separate its claims against each unit in the complex. Rather, Daystar's claims are for a lien "upon the structures of Anchor Investments." Daystar has included an aggregate amount for the entire project, rather than specifying what amount is due per unit. Daystar claims it provided labor and materials for the benefit of the entire structure.

Resolving any uncertain allegations in favor of the non-moving party, the Court finds that the labor and materials were for the benefit of the entire structure. The Anchor-Daystar contracts do not differentiate between the specific units on the property, and identify the project only as Safe Harbor. The complex constitutes one structure for the purpose of the statutory definition.[10] Therefore, Daystar is not required to segregate the claims against each individual unit.

3) Whether the claim is barred by the statute of limitations

In order to be timely, a mechanic's lien must be filed within 180 days

[10] At the hearing, the Court asked Anchor whether the complex consists of multiple structures or whether one single structure encompasses the hotel, residential, and commercial units. Anchor stated that the entire project consists of only one single structure. Daystar did not dispute Anchor's assertion.

of one of the various measuring points set forth in 25 *Del. C.* 2711(a)(2).[11] Daystar claims its mechanics' lien was filed pursuant to 25 *Del. C.* 2711(a)(2)(e), which states that a mechanic's lien may be filed within 180 days of "the date when the contractor submits his final invoice to the owner or reputed owner."

6 *Del. C.* 3507(c) states that a contractor is entitled to submit a final invoice when the agreed upon work is fully completed. Under the terms of the Daystar-Anchor contract, a claim for final payment is not proper, unless the contractor has fully performed and has received a final certificate of payment from the Architect, which the Architect does not remit unless a Certificate of Occupancy has been issued. Furthermore, under the agreement, when the contractor is terminated for cause he is not entitled to any further payment until the work is completed.[12]

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[11] 25 *Del. C.* 2711(a)(2) provides: For purposes of this subsection, and without limitation, a statement of claim shall be deemed timely if it is filed within 180 days of any of the following: a. The date of purported completion of all the work called for by the contract as provided by the contract if such date has been agreed to in the contract itself; b. The date when the statute of limitations commences to run in relation to the particular phase or segment of work performed pursuant to the contract, to which phase or segment of work the statement of claim relates, where such date for such phase or segment has been specifically provided for in the contract itself; c. The date when the statute of limitations commences to run in relation to the contract itself where such date has been specifically provided for in the contract itself; d. The date when payment of 90% of the contract price, including the value of any work done pursuant to contract modifications or change orders, has been received by the contractor; e**. The date when the contractor submits his final invoice to the owner or reputed owner of such structure;** f. With respect to a structure for which a certificate of occupancy must be issued, the date when such certificate is issued; g. The date when the structure has been accepted, as provided in the contract, by the owner or reputed owner; h. The date when the engineer or architect retained by the owner or reputed owner, or such other representative designated by the owner or reputed owner for this purpose, issues a certificate of completion; or i. The date when permanent financing for the structure is completed. (Emphasis added.).

[12] *See* AIA Document A201-1997, Sec. 14.2.3.

Relying on the above contractual language, Anchor contends Daystar's claim is untimely because it used an improper measuring time for filing of the mechanics' lien. Specifically, Anchor argues that because a proper final invoice necessarily depends on the contract terms that detail the final payment procedures and because Daystar has failed to meet both conditions precedent to final payment, Daystar's final invoice is improperly filed. Therefore, Anchor argues, the filing of the final invoice should not be used as a measuring point for statute of limitations purposes.

Daystar contends the mechanic's lien was properly filed pursuant to 25 *Del. C.* 2711(a)(2)(e). Additionally, Daystar notes that granting the motion to dismiss would require the Court to accept as true Anchor's assertions that Daystar's termination was for cause and that Daystar's final invoice was not properly filed. Daystar argues that Anchor's assertions are not supported by the allegations in the Complaint which the Court is to assume as true for the purposes of ruling on a motion to dismiss. Therefore, Daystar argues, the Motion to Dismiss should be denied.

The Court finds Daystar has filed the mechanics' lien within 180 days of the date of its final invoice. To determine whether the final invoice was timely filed pursuant to the contractual provisions, the Court would have to make factual findings as to whether Daystar had substantially breached the

contract prior to its termination and whether the termination was for good cause. The cause of Daystar's termination is a contested issue, and at this point in litigation, the Court is not in a position to make factual findings with regard to this matter. Thus, at this stage, the Court cannot find, conclusively, that Daystar was terminated for cause or that the final invoice was improperly filed. For the reasons stated above, the Motion to Dismiss is **DENIED**.

II) Motion to Dismiss the Quantum Meruit Claims.

Count two of the Amended Complaint sets forth claims for *quantum meruit* against Anchor and all the individual owners for the amounts of the change orders. Anchor filed the instant motion to dismiss the *quantum meruit* claims against it and all the individual owners.

In advancing their arguments, both parties rely upon matters outside of the pleadings. When the court is asked to consider matters outside of the pleadings, the motion to dismiss is converted to a motion for summary judgment.[13] Accordingly, the Court will use a summary judgment standard of review in deciding the issues in the instant motion.

[13] *Rockland Builders, Inc. v. Endowment Management, LLC*, 2006 WL 2053418 (Del. Super.).

The standard for granting summary judgment is high.[14] Summary judgment may be granted where the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.[15] "In determining whether there is a genuine issue of material fact, the evidence must be viewed in a light most favorable to the non-moving party."[16] "When taking all of the facts in a light most favorable to the non-moving party, if there remains a genuine issue of material fact requiring trial, summary judgment may not be granted."[17]

Anchor first argues that the *quantum meruit* claim against it is barred because Anchor and Daystar's relationship is controlled by a valid, signed, express contract. Daystar responds by arguing that the contract terms do not cover the parties' agreements with regard to the change orders, and that further discovery will show Daystar has included only claims arising from the change orders, which were not effectuated as per the contract provisions, but rather authorized by the parties' usual course of performance. Daystar asserts that to the extent any of the change orders were not effectuated as provided for under the express agreement, amounts owed under those

[14] *Mumford & Miller Concrete, Inc. v. Burns*, 682 A.2d 627 (Del. 1996).
[15] Super.Ct.Civ.R. 56(c).
[16] *Muggleworth v. Fierro*, 877 A.2d 81, 83-84 (Del. Super. Ct. 2005).
[17] *Gutridge v. Iffland*, 889 A.2d 283 (Del. 2005).

change orders would constitute work outside of the scope of the express contract and, are therefore, recoverable under a *quantum meruit* claim.

Generally*, quantum meruit* is considered only if the relationship of the parties is not governed by an express contract.[18] Delaware courts have recognized, however, that the facts may establish that the provisions of the contract relating to change orders have been waived by the parties.[19] Where such a finding is made, the court may award sums based on *quantum meruit*.[20]

The contract between Anchor and Daystar allows for three ways to change the work to be performed under the contract: 1) by written change orders (prepared by the architect and signed by the owner, contractor and architect), 2) by change directive issued by the architect and owner to Daystar, or 3) by order of the architect as to minor changes.[21] As previously stated, Daystar claims the relevant change orders were not issued according to the terms of the contract and, therefore, fall outside of its provisions.

Upon review of the numerous change orders attached to the Amended Complaint, the Court notes that there are change orders which were not

[18] *T.A. Tyre Contractor, Inc. v. Dean*, 2005 WL 1953036 (Del. Super.), *rev'd on other grounds,* 907 A.2d 146 (Del. 2006).
[19] *Id.; citing J.A. Moore & Sons Construction Co. v. Inden,* Del. Super., C.A. No. 95L-09-008, Graves, J. (June 17, 1998).
[20] *Id.*
[21] The Anchor-Daystar contract has adopted AIA Document A201-1997, which sets forth the provision on change orders in Article 7. *See* Daystar's Resp. Br. Ex. B at 24.

executed according to the provisions of the contract. It appears that some of the change orders are signed by one party only, while others are not signed at all. Therefore, the Court cannot determine whether the parties had in fact accepted the terms of the change orders. There is clearly a factual dispute as to the validity of the change orders. The Court finds that genuine issues of material fact remain in dispute regarding whether the change orders are incorporated into the contract and, therefore, not subject to the *quantum meruit* theory of recovery.

Daystar also pursues a *quantum meruit* claim against the individual unit owners. Anchor argues that the owners of the condominium units are at most third party beneficiaries of the contract between Anchor and Daystar, and that Daystar is barred from pursuing a claim against them unless it claims that it is unable to recover from Anchor. Daystar argues that to the extent the individual unit owners are benefiting from the use and enjoyment of those portions of the structure which were constructed through the change orders, those portions are outside of the express agreement between Anchor and Daystar, and therefore, it would be unnecessary for Daystar to show that it could not collect from Anchor, as it is not the situation that they are seeking payment first from a privity party. Nevertheless, Daystar has in fact alleged that it is unable to recover from Anchor and that Anchor refuses to

pay for labor and materials connected with the project. Daystar also notes that counsel for Anchor does not represent the individual owners, who have separate counsel. Therefore, Daystar argues that Anchor's attempt to file the motion on behalf of the individual owners should be stricken.

In Delaware, the courts will not consider a *quantum meruit* claim against an owner unless the subcontractor is unable to recover under the contract between the subcontractor and the general contractor.[22] To recover in *quantum meruit,* the performing party under a contract must establish that it performed services with an expectation that the receiving party would pay for them, and that the services were performed under circumstances that should have put the recipient on notice that the performing party expected the recipient to pay for those services.[23]

Here, Daystar alleges it cannot recover from Anchor because Anchor is unable, or has refused, to pay for the work performed. As stated above, the facts may reveal that the change orders do not fall within the terms of the contract. As such, the claims would be subject to recovery under a *quantum meruit* claim. If Anchor is found to be unable to pay Daystar for work performed, Daystar could recover from individual owners if it establishes the

[22] *Gilbane Bldg. Co. v. Nemours Foundation*, 606 F. Supp. 995, 1007 (D. Del. 1985); *Chrysler Corp. v. Airtemp Corp*., 426 A.2d 845, 850 (Del. Super. 1980).
[23] *Olsen v. T.A. Tyre General Contractor, Inc.,* 907 A.2d 146 (Del. 2006).

two factors stated above: that Daystar performed the work with the expectation to be paid and that the unit owners were on notice that Daystar expected to be paid by them.

Although it is clear from the change orders that Daystar expected to be paid for the additional work it performed, at this juncture, the Court is not presented with sufficient facts to determine whether Daystar had any expectation of payment from the individual owners or whether the unit owners were on notice of such expectations. In their submissions, neither party addresses the issue of notice to unit owners. Therefore, the Court cannot hold conclusively that there is no genuine issue of material fact with regard to this issue. As such, the Court finds it is too early in litigation to award summary judgment on the *quantum meruit* claims against individual unit owners.

Finally, Anchor argues, Daystar should be equitably estopped from applying a *quantum meruit* claim against owners where Daystar has issued releases against some of the residential and commercial units.[24] In response, Daystar argues that the Mechanics' Lien Releases waive all lien rights that Daystar may have to the space within the four walls of the individual units, but not the 3.4% interest in the common areas which was subsequently

[24] On March 8, 2005, Daystar signed a Release/Waiver of Lien Rights against units 201, 301, and 303.

granted by deed to each unit owner. In other words, Daystar argues that the releases did not waive its right to place a lien on the common areas.

The right to a mechanics' lien may be expressly waived.[25] The mechanics' lien statute provides that lien waivers are enforceable only if "executed and delivered… simultaneously with or after payment for the labor performed and materials supplied…"[26] Therefore, waivers are only valid to the extent they reflect payment for services and materials.[27] The waiver "must be given no broader coverage than that which clearly results from a reasonable application of the language of the contract. A waiver of a mechanics' lien must be certain in its terms. If the terms are ambiguous, doubt is resolved against the waiver."[28]

The evidence establishes that on March 8, 2005, Daystar issued a Waiver of Liens as to units 201, 301, and 303.[29] The waiver was related to the transfer of title as to those units from Anchor to individual owners. The language of the waiver specifies each unit number, which indicates that it applies to the individual units and not to the common areas within the

[25] See *Middle States Drywall, Inc. v. DMS Properties-First, Inc.,* 1996 WL 453418 (Del. Super.); 25 *Del. C.§* 2706(b).
[26] 25 *Del. C.* 2706(b).
[27] *Middle States Drywall, Inc. v. DMS Properties-First, Inc*., 1996 WL 453418 (Del. Super.); In the case at hand, Daystar does not argue that the release signed and released by Daystar is in any way invalid for lack of payment or otherwise.
[28] *G. R. Sponaugle & Sons, Inc. v. McKnight Constr. Co*., 304 A.2d 339 (Del. Super. 1973).
[29] Although the parties do not specify how many releases Daystar has issued, the Court found attached to the Motion to dismiss a single document titled "Contractor's Release or Waiver of Liens," which reflects a waiver as to three individual units. Anchor's Motion to Dismiss Quantum Meruit Claims, Ex. A-10.

structure. Construing the language of the waiver narrowly, and resolving all ambiguities against the waiver, the Court finds that the Waiver of Liens applies to the units alone and does not constitute a waiver as to the common elements. Accordingly, the Court finds that Daystar is not estopped from raising its claims. For the reasons stated above, the Motion to Dismiss the *Quantum Meruit* Claims, converted to a Motion for Summary Judgment, is **DENIED**.

III) Motion to Dismiss for Lack of Venue and Jurisdiction.

The Anchor-Daystar contract contains an arbitration clause requiring that "any claims arising out of or related to the contract… shall, after decision by the architect, be subject to arbitration."[30] Anchor contends that because the contract requires the parties to resolve claims in arbitration, these claims are improperly before this Court. Daystar concedes that the provision in the contract requires any claim or dispute arising under the contract to be resolved by binding arbitration. However, Daystar contends that the contract sets forth a different procedure for filing claims that arise out of, or relate, to a mechanics' lien. Specifically, Daystar relies on section 4.4.8 of the contract, which states "if a claim relates to or is the subject of a mechanics' lien, the party asserting such claim may proceed in accordance with applicable law *to comply with the lien notice or filing deadlines* prior to resolution of the Claim by the Architect, by mediation or by arbitration."(Emphasis added).

Daystar contends that the mechanics' lien claim is filed in accordance with 25 *Del. C.* 2701, that the *quantum meruit* claim relates to the mechanics' lien claim, and that the claims against individual owners are not raised under the contract because those owners were not in contractual

[30] Daystar's Amended Complaint, Ex. D, Anchor-Daystar contract, section 4.6.1.

privity with Daystar and thus, are not bound by the terms of the contract requiring arbitration.

The Court finds that Daystar properly filed its mechanics lien claims with this Court in order to secure the lien and prevent the expiration of statute of limitations. Further, the *quantum meruit* claims are related to the mechanics' lien claims as they arise from the same events and circumstances, involve the same project, and seek recovery of the same amount. However, because the contract mandates arbitration of all claims arising out of the contractual relationship between the parties, the Court will stay further action in the case, pending arbitration.

The *quantum meruit* claims against individual unit owners are not subject to arbitration as the owners are not in contractual privity with Daystar and are therefore, not subject to the arbitration provisions of the contract. Nevertheless, the *quantum meruit* claims against the owners will be properly raised only if it is determined that Daystar is unable to recover from Anchor, the general contractor. At this time, the Court has stayed further action relating to Daystar's claims against Anchor, pending arbitration. The Court will also stay any decision on claims against individual owners until further determination can be made regarding Anchor's ability to pay Daystar. Accordingly, the Motion to Dismiss for

Lack of Venue and Jurisdiction is **DENIED,** and the case is stayed pending arbitration.

Conclusion

For the reasons stated above, Defendant Anchor's Motion to Dismiss for failure to comply with statutory requirements, Motion to Dismiss the *quantum meruit* claims, converted to a Motion for Summary Judgment, and Motion to Dismiss for lack of venue and jurisdiction are **DENIED**.

IT IS SO ORDERED.

_____/s/_____
M. Jane Brady
Superior Court Judge